

NORTH CAROLINA GENERAL ASSEMBLY



GENERAL STATUTES COMMISSION

**REPORT TO THE
2020 SESSION
of the
2019 GENERAL ASSEMBLY
OF NORTH CAROLINA**

MAY, 2020

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TRANSMITTAL LETTER

May 1, 2020

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TO THE MEMBERS OF THE 2020 REGULAR SESSION
OF THE 2019 GENERAL ASSEMBLY

The **GENERAL STATUTES COMMISSION**, respectfully submits the following report to the 2020 Regular Session of the 2019 General Assembly.

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INTRODUCTION

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Section 2.10 of S.L. 2019-111 (Senate Bill 355, Land-Use Regulatory Changes) provides:

If Part II of this act becomes law in 2019, it is the intent of the General Assembly that legislation contained in Part I of this act or in other acts enacted in the 2019 Regular Session of the 2019 General Assembly, or [sic] that affects statutes repealed and replaced by similar provisions in Chapter 160D of the General Statutes, as enacted by Part II of this act, also be incorporated into Chapter 160D of the General Statutes.

It is the further intent of the General Assembly that legislation contained in the telecommunications provisions of Part II of this act makes no substantive policy changes from the statutes repealed.

Section 2.10 goes on to direct the General Statutes Commission to "study the need for legislation to accomplish this intent and shall report its findings and recommendations, including any legislative proposals, to the 2020 Regular Session of the 2019 General Assembly."

S.L. 2019-111, including Part II of that act, became law on July 11, 2019.

The General Statutes Commission was created by the General Assembly in 1945. The statutory provisions relating to the Commission are found in Article 2 of Chapter 164 of the General Statutes (N.C. Gen. Stat. § 164-12, et seq.).

PROCEEDINGS

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The General Statutes Commission (Commission) opened a docket (DN 19-3) on this study at its , 2019, meeting. The Commission discussed the docket at five of its meetings, on January 10, 2020, February 7, 2020, March 6, 2020, April 3, 2020, and May 1, 2020.

The following is a summary of the Commission's proceedings on this docket. The Commission's minutes of these meetings, consisting of recordings of the meetings, and the documents related to this docket are available through the Revisor of Statutes, Bill Drafting Division, North Carolina General Assembly, 300 N. Salisbury Street, Suite 401, Raleigh, North Carolina 27603-5925; telephone (919) 733-6660; fax (919) 715-5459.

At its **January 10, 2020**, meeting, the Commission was scheduled to begin consideration of this docket with a review of an initial draft, but it was unable to do so because of work on other agenda items. The Commission authorized staff to include in any draft it reviewed any needed corrections of technical and other drafting errors, some of which have already been reported to the staff.

At its **February 7, 2020**, meeting, the Commission welcomed Mr. Mike Carpenter, Executive Vice President and General Counsel, North Carolina Home Builders Association, who attended the Commission's meeting to provide comments and answer questions on this docket.

The Assistant Revisor reported that, in addition to Part I of S.L. 2019-111 (Part I), three other acts had amended the statutes repealed or replaced in Part II of S.L. 2019-111

(Part II). These were S.L. 2019-35, 2019-79, and 2019-174. The "First Draft; DN 19-3 – Planning and Development Reg. Study; February 5, 2020," contained provisions incorporating the relevant portions of these three other acts into Chapter 160D of the General Statutes (Chapter 160D). The draft also restructured for clarity the provisions of G.S. 160D-1116. Provisions incorporating Part I were planned for the next draft. The Commission reviewed the "First Draft" and made or requested improvements in the draft.

At its **March 6, 2020**, meeting, the Commission welcomed Professor David W. Owens, Gladys Hall Coates Professor of Public Law and Government, **UNC School of Government**, Mr. Craig Justus, **[]**, and Mr. Tim Minton, North Carolina Home Builders Association, who attended to provide comments and answer questions on this docket.

The Commission reviewed the "Second Draft; DN 19-3 – Planning and Development Reg. Study; March 4, 2020." The Assistant Revisor explained that this draft included changes to the "First Draft" made or requested by the Commission at its February 7, 2020, meeting, internal reference and other technical corrections identified by staff at the General Assembly, and other amendments recommended by **[a drafting committee of the North Carolina Bar Association's _____ Section]**. The draft also included sections incorporating some, but not all, of the amendments to Chapters 160A and 153A of the General Statutes made by Part I. The Assistant Revisor also distributed a handout with a new revision of G.S. 160D-1116(c), designed to clarify that statute.

The Commission reviewed the draft and the handout, accepted those changes from the Bar Association's drafting committee that appeared to be noncontroversial, and made or requested changes to improve the draft and incorporate the handout. It agreed to bring current G.S. 160A-439.1 forward as a new G.S. 160D-1130 upon hearing from Professor

Owens that that section, which was enacted in 2018, had been inadvertently not included in Chapter 160D. The Commission also decided that the section, which allows cities to petition a court to appoint a receiver to repair, sell, or demolish vacant buildings under certain conditions, should be extended to allow counties to have this authority as well as cities, because the Commission saw no reason not to afford counties this option.

After a long discussion, the Commission decided to retain the new civil action provision enacted by Section 1.7 of S.L. 2019-111 in place of the more general civil action provision of G.S. 160D-405(c) and to make other changes necessary to conform to that approach.

At its **April 3, 2020**, meeting, the Commission again welcomed Professor Owens and Messrs. Carpenter and Justus, who attended to provide comments and answer questions on this docket.

The Commission reviewed the "Third Draft; DN 19-3 – Planning and Development Reg. Study; March 31, 2020."

The Assistant Revisor explained that this draft contained sections incorporating into Chapter 160D the amendments to G.S. 160A-385/153A-344 and G.S. 160A-385.1/153A-344.1 from Section 1.3(b) through (f) of S.L. 2019-111 to the extent necessary. This task had been the most difficult part of the work for the study because these amendments and the comparable portion of Chapter 160D (G.S. 160D-108) were structurally and philosophically incompatible. After much discussion among the various interested parties, it had been decided to propose that G.S. 160D-108 be almost entirely replaced with a reversion to the substance of G.S. 160A-385/153A-344 and G.S. 160A-385.1/153A-344.1, as amended by Section 1.3(b) through (f) of S.L. 2019-111, updated

to conform to Chapter 160D to the extent possible. The proposal included the repeal of the definition of "vested right" in G.S. 160D-102. This decision complied with the corollary to the General Assembly's stated intent in directing that this legislation be incorporated into Chapter 160D, that in the event of a conflict between the provisions of Part I and the new Chapter 160D, the provisions of Part I would prevail. The Commission agreed with this proposal, with some changes to improve the draft.

The Commission revisited its decision at its March 6, 2020, meeting to expand the proposed new G.S. 160D-1130 (bringing forward the inadvertently omitted G.S. 160A-439.1) to counties on learning that, reportedly, the counties had asked not to be given the authority in this section when the section was enacted in 2018. Some Commission members expressed surprise because the section is permissive and does not impose any obligation on a local government to use it. It was also noted that one of the purposes of Chapter 160D was to have greater uniformity in land-use provisions. As a result, the Commission asked staff to ascertain the current position on this question and, if the counties still did not want this authority, to ask why this was so.

There being no apparent opposition after inquiry among members of the Bar Association's drafting committee, the Commission agreed to delete the optional authority to request the posting of a bond for a temporary certificate of occupancy at the request of the North Carolina Home Builders Association. The requirement appears for the first time in Chapter 160D (i.e., it is not currently effective law), and Professor Owens reported that none of his colleagues remembered its addition or any justification for it.

This draft also contained (i) an amendment to the applicability provision requested by the North Carolina Homebuilders' Association to expressly continue the applicability

provisions of Section 3.1 of S.L. 2019-111 and (ii) a redrafted provision to allow local governments that are currently ready to operate under Chapter 160D to do so rather than needing to wait until January 1, 2021. The redrafted provision would repeal the effective date provision of Part II of S.L. 2019-111 and would provide for that Part to become effective when this bill becomes law, but it also includes a grace period until July 1, 2021, to allow extra time for local governments to update their ordinances in light of the current difficulties caused by COVID-19. The Commission agreed to the new applicability provision. It requested that the provision changing the effective date of Part II be clarified but agreed to it in principle.

In its review of the "Third Draft," the Commission noted generally that the word "shall" is used in Chapter 160D in a manner contrary to the instructions in the General Assembly's drafting manual to draft statutes in the present indicative tense and to reserve "shall" for mandates and conditions precedent. It asked the Assistant Revisor to review the instances of "shall" in the draft and conform them to the manual.

[At its **May 1, 2020**, meeting, the Commission again welcomed Professor Owens and Messrs. Carpenter and Justus, [as well as ???].

The Commission reviewed the "Fourth Draft; DN 19-3 – Planning and Development Reg. Study; April 26, 2020." The Assistant Revisor explained that this draft included the changes made or requested by the Commission at its last meeting plus four new sections updating the term "public hearing" to the more precise terminology in Chapter 160D and an additional amendment bringing forward the substance of current G.S. 153A-331(d). She also presented two additional amendments, one to repeal the stop-gap extension of the effective date of Part II in **[HB 1043]** if enacted, since it would no longer be

necessary, and one to correct the unintended repeal of G.S. 168-23 by Section 2.6(j) of S.L. 2019-111.

The Assistant Revisor reported that the telecommunications provisions in Chapters 160A and 153A of the General Statutes appear in Part 3E of Article 19 of Chapter 160A (G.S. 160A-400.50 through 160A-400.57) and Part 3B of Article 18 of Chapter 153A (G.S. 153A-349.50 through 153A-349.53). The telecommunications provisions of Chapter 160D are in Part 3 of Article 9 of that chapter (G.S. 160D-930 through 160D-937). A comparison between Part 3E and Part 3 showed only changes required by the removal of Part 3E to the new chapter (e.g., section numbers and updated terms and cross-references) and a few stylistic changes that did not appear to alter the meaning.

The Commission reviewed the "Fourth Draft" and approved its introduction with the changes approved at this meeting, including the two proposed amendments.]

A chart showing the disposition into Chapter 160D of legislation contained in Part I and S.L. 2019-35, 2019-79, and 2019-174 is included in this report as Appendix B.

FINDINGS AND RECOMMENDATIONS

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As a result of the study performed by the General Statutes Commission, the Commission finds:

(1) The telecommunications provisions of Chapter 160D of the General Statutes (Chapter 160D) as enacted by Part II of S.L. 2019-111, found in Part 3 of Article 9 of that chapter, make no substantive policy changes from the statutes repealed (those found in Part 3E of Article 19 of Chapter 160A of the General Statutes and Part 3B of Article 18 of Chapter 153A of the General Statutes).

(2) In addition to the legislation of Part I of S.L. 2019-111 (Part I), S.L. 2019-35, 2019-79, and 2019-174 amended sections in Article 18 of Chapter 153A of the General Statutes and Article 18 of Chapter 153A of the General Statutes. These articles were repealed in Part II of S.L. 2019-111.

(3) There is a need for legislation incorporating Part I and the relevant portions of S.L. 2019-35, 2019-79, and 2019-174 if the legislation contained therein is not to be repealed when Part I of S.L. 2019-111 becomes effective.

(4) There is a desire on the part of some local governments to accelerate the effective date of Chapter 160D, while there is also a need to provide local governments with additional time to revise their ordinances to comply with Chapter 160D.

(5) The attached legislative proposal will accomplish these goals.

The Commission specifically recommends the enactment of the legislative proposal attached as Appendix A and entitled, “AN ACT TO COMPLETE THE

CONSOLIDATION OF LAND USE PROVISIONS INTO ONE CHAPTER OF THE
GENERAL STATUTES AS DIRECTED BY S.L. 2019-111, AS RECOMMENDED BY
THE GENERAL STATUTES COMMISSION.

This the 1st day of May, 2020.

Respectfully submitted,

John J. Korzen, Chairman
Sabra J. Faires, Vice Chairman

Ted Davis, Jr.
Marc D. Bishop
Peter G. Pappas
Jane Wettach
Richard T. Bowser

Lewis Moore Everett

Starkey Sharp
Chuck Edwards
Susan E. Hauser
Andrew J. Haile
Carlton M. Mansfield

LEGISLATIVE PROPOSAL

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[final draft will be incorporated here]

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CHART OF DISPOSITION OF OTHER 2019 LEGISLATION INTO CHAPTER 160D

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2019 Legislation Affecting Repealed Land Use Articles	G.S. Sections Amended	Disposition in Chapter 160D	2020 Bill Draft Section
2019-35, s. 3	160A-458.4	160D-916(b)	s. 23
2019-79, s. 1	160A-372	160D-804.1	s. 20(b)
2019-79, s. 2	153A-331	160D-804.1	s. 20(b)
2019-174, s. 1	160A-413	160D-1106	s. 29
2019-174, s. 3(a), (c) ¹	160A-372(f1), (f2) 153A-331(f1), (f2)	160D-804(h), (i)	s. 20(d)
2019-174, s. 3(b), (d)	160A-381 153A-340	160D-702	s. 15
2019-174, s. 5(a), (b)	160A-423 153A-363	160D-1116	s. 32
2019-174, s. 7(a), (b)	160A-417(a1) 153A-357(a1)	160D-1110(b)	s. 30
2019-174, s. 9	2018-29, s. 6(c) (expiration date for 153A-352(g)/160A- 412(g))	160D-1104(f)	s. 28(b)
2019-111, s. 1.2(a), (b) ²	160A-360.1 153A-320.1	160D-108(b)	s. 5(a)
2019-111, s. 1.3(a), (d)	160A-385(c) 153A-344(b1)	160D-108(c)	s. 5(a)
2019-111, s. 1.3(b)	160A-385(a)	160D-603	s. 5(a)
2019-111, s. 1.3(b), (e)	160A-385(b) 153A-344(b)	160D-108(c), (f)	s. 5(a)
2019-111, s. 1.3(b), (e)	160A-385(d) 153A-344(c)	160D-108(d)	s.5(a)
2019-111, s. 1.3(b), (e)	160A-385(e) 153A-344(d)	160D-108(e)	s.5(a)

¹ S.L. 2019-174, ss. 2, 4, 6, 8, 10, and 11 did not affect Article 19 of Chapter 160A or Article 18 of Chapter 153A, and the remaining provisions in that act are effective date/applicability provisions that are not codified.

² S.L. 2019-111, ss. 1.1, 1.11, and 1.16 did not amend sections in Article 19 of Chapter 160A or Article 18 of Chapter 153A. Section 1.3(c) and (f) repealed a definition that was not brought forward into Chapter 160D, so no change is needed.

2019-111, s. 1.3(b), (e)	160A-385(f) 153A-344(e)	160D-108(c), (d), (i)	s.5(a)
2019-111, s. 1.3(b), (e)	160A-385(g) 153A-344(f)	160D-108(j)	s.5(a)
2019-111, s. 1.4	160A-384(a)	160D-601(d)	s. 12
2019-111, s. 1.4	160A-384(a), (b1)	160D-602(a), (d)	s. 13
2019-111, s. 1.5	153A-343(a)	160D-601(d)	s. 12
2019-111, s. 1.5	153-343(b1)	160D-602(d)	s. 13
2019-111, s. 1.6	160-388(b1)(6)	160D-405(f)	s. 10
2019-111, s. 1.7	160A-393.1	160D-1403.1	s. 46
2019-111, s. 1.8	160A-364.1(c)	160D-1405(c)	s. 48
2019-111, s. 1.9	160A-393(d), (j), (k), (l)	160D-1402(j1), (i), (j), (k)	s. 45
2019-111, s. 1.10	160A-393.2	160D-1403.2	s. 47
2019-111, s. 1.12	160A-381(c1)	160D-705(c)	s. 17
2019-111, s. 1.13	153A-340(c1)	160D-705(c)	s. 17
2019-111, s. 1.14	160A-382(b)	160D-703(b)	s. 16
2019-111, s. 1.15	154A-342(b)	160D-703(b)	s. 16
2019-111, s. 1.17(a), (b)	153A-346(b) 160A-390(b)	160D-706(b)	s. 18